

REMARKS

The Office Action under the mailing date July 15, 2005 has been studied. The references cited therein have been obtained and studied. This patent application has been reviewed in light of the Examiner's remarks.

This application was filed with a total of 21 claims, 2 of which were independent claims. This Amendment hereby cancels claims 2, 3, 4, 5 and 6 leaving a total of 16 claims. Claims 11 and 16, formerly dependent claims, have each been amended and each is in independent form. There are now 4 independent claims in the total of 16 claims. An increase in filing fee appears appropriate.

This application stands with claims 1-21 rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 1, 15 and 21, mentioned in the remarks of the Examiner, have each been amended to overcome the rejection under 35 U.S.C. 112, second paragraph and are in allowable condition. It is respectfully requested that the rejection of claims 1 and 7-21, under 35 U.S.C. 112, second paragraph be withdrawn and that claims 1 and 7-21 be found in condition for allowance.

Claims 1, 8, 10, 15, 19 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Taketsugu et al in view of Cunningham. It is respectfully submitted that the Examiner has combined the teachings of two unrelated issued patents where there is no indication, no suggestion and no teaching in either of the references that the combination suggested by the Examiner should be made nor is there any incentive to do so. In accordance with recent holdings of the Court of Appeals for the Federal Circuit inherentness or obviousness can not be established by combining the teachings of prior art to produce the claimed invention absent some teaching or suggestion in the prior art which make the combination desirable. There is nothing in section 35 U.S.C. 103(a) that permits rejection by alleging something would be inherent.

See Carl Schenck, A.G. v Nortron Corp., 218 U.S.P.Q. 698; and In re Sernaker, 217 U.S.P.Q. 1; both citing In re Imperato, 179 U.S.P.Q. 730. See also ACS Hospital Systems, Inc. v Montefiore Hospital, 221 U.S.P.Q. 929, 933 where the Court states:

"Obviousness cannot be established
by combining the teachings of the prior

art to produce the claimed invention,
absent some teaching or suggestion
supporting the combination. Under
Section 103, teachings of references
can be combined only if there is
some suggestion or incentive to do so."
(Emphasis in the original.)

It is respectfully submitted that the rejection
under 35 U.S.C. 103(a) can not be up-held under
current rulings of the Court and it is respectfully
requested that the rejection of claims 1, 8, 10, 15,
19 and 20 be withdrawn and that these claims be
allowed.

Claims 7, 9, 17 and 18 stand rejected under 35
U.S.C. 103(a) as being unpatentable over Taketsugu
et al in view of Cunningham and further in view of
Morgenstern. It is respectfully submitted that there
is no suggestion or teaching in either Taketsugu et
al and Cunningham nor in Taketsugu et al and
Morgenstern that suggest or teach such combination
as proposed by the Examiner and no incentive, in
either combination of references, to do so. In view
of the above citations, the rejection of claims 7,
9, 17, and 18 under 35 U.S.C. 103(a) can not stand.
It is respectfully requested that the rejection of

claims 7, 9, 17 and 18 be withdrawn and that these claims be allowed.

Claims 11 - 14, 16 and 21 have been amended and are now in condition for allowance. Claim 11 has been amended and is in independent form, with all the limitations of its base claim and intervening claims. Claims 12 and 13 are in original form and are dependent on amended claim 11. Claim 16 has been amended and is in independent form, including all the limitations of its base claim and any intervening claims. Claim 21 has been amended and is dependent on amended claim 16. It is believed claim 11 - 14, 16 and 21 are each in allowable condition and allowance of these claims is respectfully requested.

In view of the above, it is respectfully requested that claims 1 and 7 - 21 be found in condition for allowance and be allowed.

There are now four (4) independent claims in this application and an increase in filing fee of \$100.00 appears to be appropriate. Applicant is entitled to and has Small Entity status. A check of \$100.00 accompanies this Amendment for payment of the additional filing fee.

It is respectfully requested that the Examiner

enter this Amendment, allow claims 1 and 7 - 21 and
issue a Notice Of Allowance on this application.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'K.E. Merklen', with a long horizontal line extending to the right.

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